Section 6  
Corporate Actions

**Scope of section[[1]](#footnote-1)**

This section deals with corporate actions, save for transactions. Each corporate action is covered under the following headings: (i) specific requirements, (ii) announcements, (iii) contents of circular and (iv) submission to the JSE, to the extent applicable.

The corporate actions covered under this section are:

1. Acquisition issues and vendor consideration placings;
2. Alteration of share capital;
3. Dividends, capitalisation issues and scrip dividends;
4. Change of name;
5. Issues for cash;
6. Listed options;
7. Odd lot offers;
8. Payments to securities holders;
9. Redemption of listed redeemable securities;
10. Repurchase of equity securities;
11. Rights offer and claw back offers;
12. Transfer of sector; and
13. Voluntary liquidation.

General

6.1 The Section deals with general corporate actions, which must be read with Sections 9 (Transactions), 10 (Related Party Transactions), 12 (Mining & Oil/Gas), 13 (Property) and 15 (Investment Entities).

6.2 All corporate actions must adhere to the corporate actions timetable and be approved by the JSE, save as otherwise specified.

6.3 All circulars must include details of the actions required by certificated and dematerialised shareholders in relation to the corporate actions event and voting.

Acquisition issues and vendor consideration placings [[2]](#footnote-2)

Specific requirements

6.4 Approval for listing will only be granted for an acquisition issue for a bona fide acquisition and not for a circumvention of securities holders’ rights of pre-emption.

6.5 A vendor consideration placing must not be placed at a price lower than:

(a) a 10% discount to the 30 business day weighted average traded price prior to the date that the placing is approved by the board; or

(b) a 10% discount to the 3 business day weighted average traded price prior to the date of the placing.

The minimum placing price may be exceeded if approved by shareholders in general meeting through an ordinary resolution, excluding the votes of the vendor, its associates and other parties participating in the placing.

6.6 A vendor consideration placing does not require JSE approval.

Announcement

6.7 Refer to the announcement obligations for transactions in terms of Sections 9, 10, 12, 13 and 15.

Contents of circulars

6.8 For the contents of acquisition issue circulars, refer to Sections 9, 10, 12, 13 and 15, as the case may be.

6.9 A vendor consideration placing does not require a circular.

Submission to the JSE

6.10 The following must be submitted to the JSE:[[3]](#footnote-3)

(a) the circular, if applicable;

(b) the signed acquisition agreement;

(c) the application for listing available on the JSE Forms Portal;[[4]](#footnote-4)

(d) the exchange control approval, if applicable; and

(e) experts’ consents appearing in the circular

Alteration of share capital

Specific requirements

6.11 Alteration of share capital includes amendments to authorised share capital, rights attaching to shares, sub-divisions and consolidations.

6.12 Any alteration to the share capital of the applicant issuer, whether issued or not, must be approved by shareholders in general meeting through a special resolution in terms of the Act.

6.13 A circular or announcement for an increase in share capital, sub-division and consolidation does not require JSE approval but must be approved by the sponsor.

6.14 The following information must be included in the circular:[[5]](#footnote-5)

(a) details of the special resolution to be approved by shareholders*;*

(b) the rationale and effective date for the alteration of share capital;

(c) the ratio, if applicable; and

(d) the before and after share capital structure of the issuer, if applicable.

Submission to the JSE

6.15 The following must be submitted to the JSE:[[6]](#footnote-6) [[7]](#footnote-7)

(a) the circular;

(b) if an increase in authorised share capital, the application for listing available of the JSE Forms Portal;[[8]](#footnote-8) and

(c) the exchange control approval, if applicable[[9]](#footnote-9) .

Dividends

Dividends and interest

6.16 The declaration of dividends, interest and other similar payments (“distribution payments”) by an applicant issuer must be announced immediately in terms of 6.20.[[10]](#footnote-10)

6.17 If a decision is made not to declare distribution payments and is price sensitive it must be announced immediately.[[11]](#footnote-11)

Capitalisation issues and scrip dividend

Specific requirements

6.18 A capitalisation issue must not be presented in a manner *in lieu* of a dividend.

6.19 An announcement or circular, for a capitalisation issue/scrip dividend does not require JSE approval, but must be approved by the sponsor.

**Announcement**

6.20 The announcement must include the following, if applicable:

(a) if a cash disbursement, a statement whether the distribution is a reduction of contributed tax capital or a dividend (as defined in the Income Tax Act)*;*

(b) if a capitalisation issue or dividend (including in specie dividend), a statement whether the issue is distributed from capital or income reserves

(c) local dividend tax rate represented as a percentage;

(d) gross local dividend amount represented as cents per share;

(e) net local dividend amount represented as cents per share;[[12]](#footnote-12) [[13]](#footnote-13)

(f) non-reclaimable foreign withholding dividend tax rate represented as a percentage;[[14]](#footnote-14)

(g) dividend reclaimable tax rate applicable overseas represented as a percentage;[[15]](#footnote-15)

(h) issued share capital as at declaration date;[[16]](#footnote-16)

(i) closing market price of the distribution in specie as at deemed payment date which shall be no later than the close of business on record date;[[17]](#footnote-17)

(j) company registration number; and[[18]](#footnote-18)

(k) company tax reference number.[[19]](#footnote-19)

Contents of circular

6.21 The following must be included in the circular:

(a) the reason for the capitalisation issue or scrip dividend;

(b) the class and the par value (if any) of the securities involved;

(c) if applicable, a form of election, whereby the shareholder may elect to receive cash in substitution for the whole or part of the scrip dividend entitlement and vice versa;

(d) whether any directors, prescribed officers and/or company secretary of the issuer will receive securities from the capitalisation issue or scrip dividend;[[20]](#footnote-20)

(e) if applicable, the last day on which shareholders must make their election;

(f) a statement on any tax implications for both resident and non-resident shareholders;

(g) if a scrip dividend, a statement in bold and upper case, on the front page, drawing shareholders’ attention to the entitlement to be received if no election is made, being shares or cash;

(h) the amount to be capitalised from the share premium or reserves of the issuer in order to be able to issue the capitalisation securities as fully paid up;

(i) the ratio in which the capitalisation securities will be issued and allotted to shareholders of the issuer;

(j) the relevant corporate action timetable;[[21]](#footnote-21)

(k) if a capitalisation issue, disclosure whether the issue is distributed from capital or income reserves (if applicable); and[[22]](#footnote-22)

(l) if a dividend (including in specie dividend), as defined in the Income Tax Act, disclosure of the details in the required announcement above.[[23]](#footnote-23)

Submission to the JSE

6.22 The following must be submitted to the JSE:[[24]](#footnote-24)

(a) the circular;

(b) the application for listing available on the JSE Forms Portal, which must be received by the finalisation date;

(c) exchange control approval, if applicable;[[25]](#footnote-25)

(d) if a scrip dividend, a resolution by the board that the issuers has passed the solvency and liquidity test in terms of the Act and that, since the test was performed, there have been no material changes to the financial position of the issuers or its group; and[[26]](#footnote-26)

(e) the board resolution authorising the capitalisation issue or scrip dividend.

Change of name

Specific requirements

6.23 An issuer proposing to change its name must obtain approval from the JSE first and then seek shareholders’ approval in general meeting in terms of the Act.

6.24 An application for approval must include :[[27]](#footnote-27)

(a) the new name;

(b) the proposed new abbreviated name to be used on the JSE trading system, being no more than nine letters in length; and

(c) a copy of the name reservation from the Commission.

6.25 The former name of the issuer must be shown on announcements and the new share certificate (in brackets under the new name], for a period of at least one year from the date of the name change.The issuer must submit evidence to the JSE that the special resolution was filed with the Commission, by no later than the finalisation date.[[28]](#footnote-28)

**Submission to the JSE**

6.26 The following must be submitted to the JSE:[[29]](#footnote-29)

(a) the application for name change; and

(b) the circular or notice of general meeting.

Issues for cash

**General**

6.27 An issuer proposing to issue equity securities for cash must first offer those securities to existing holders of equity securities pro rata their holdings unless a specific or general authority to issue shares for cash is obtained in terms of the Requirements.

6.28 Equity securities which are the subject of the issue must be of a class already in issue or represent securities or rights that are convertible into a class already in issue.

6.29 An issue of equity securities for cash (which includes an issue for the extinction of a liability, obligation or commitment, restraint, or settlement of expenses) must be approved by equity securities holders in general meeting:[[30]](#footnote-30)

(a) specifically in terms of 6.34; or

(b) generally in terms of 6.38.

6.30 Approval from holders of equity securities is not required for a once-off issue for cash, where the dilution is equal to or less than 0.25% (calculated by taking the number of equity securities to be issued and dividing it by the number of listed equity securities, excluding treasury shares prior to the issue) and the discount does not exceed 10% of the weighted average traded price of such securities measured over the 30 business days prior to the date that the price of the issue is agreed.

6.31 The JSE may waive some or all of the specific requirements pertaining to an issue for cash, if it is satisfied that [Schedule 11] (dealing with Rescue Operations) has been met.

6.32 Where any issue for cash constitutes an “affected transaction” as defined in the Act, the transaction must be referred to the Panel.[[31]](#footnote-31)

6.33 If an issuer wishes to issue treasury shares, such issue must comply with the issue of shares for cash provision as if a fresh issue of equity securities.[[32]](#footnote-32)

Specific issue

Specific requirements

6.34 An issuer must obtain approval in general meeting through an ordinary resolution. Parties and their associates participating in the issue must be excluded from voting.

6.35 Issuers may undertake an accelerated specific issue, through an expedited approval process and prescribed circular in the format available on the JSE Forms Portal.

**Announcement**

6.36 The issuer, after it has agreed the terms, must immediately release an announcement containing details of the issue, including:[[33]](#footnote-33)

(a) the number and price of the securities to be issued;

(b) the weighted average traded price of the equity securities over the 30 business days prior to the date that the issue is agreed;

(c) the name of the subscriber, including beneficial owner. If a related party, confirmation of that fact and the nature of the related party;

(d) if the issue is to a related party, a statement by the independent members of the board whether the issue is fair insofar as the equity securities holders (excluding the related party, its associates) of the issuer are concerned;

(e) total consideration to be received and intended use of funds; and

(f) a detailed narrative on the impact of the issue on the financial statements, if not settled in cash.[[34]](#footnote-34)

Contents of circular

6.37 The following must be included in the circular, which must be sent to equity securities holders within 60 days of publication of the announcement:[[35]](#footnote-35)

(a) the notice of general meeting;

(b) a detailed narrative on the impact of the issue on the financial statements;

(c) name of the subscriber, including beneficial owner. If a related party, confirmation of that fact and details of the related party classification.;

(d) the number of equity securities to be issued;

(e) the discount to the weighted average traded price of the equity securities over the 30 business days prior to the date that the issue is agreed;

(f) total consideration to be received and intended use of funds;

(g) if the issue is to a related party, a statement by the independent members of the board whether the issue is fair insofar as the equity securities holders (excluding the related party, its associates) of the issuer are concerned;

(h) if the issue involves the issue of options/convertible securities that exceeds the discount limitation in 6.41(b) below, a statement must be included by the independent members of board confirming whether the issue is fair insofar as the equity securities holders (excluding the related party/ies) of the issuer are concerned;

(i) the required resolution seeking approval from equity securities holders; and

(j) the following paragraphs of Section 7:

|  |  |
| --- | --- |
| **Paragraph** | **Nature of statement** |
| 7.A.1 | Name, address and incorporation |
| 7.A.4 or 7.A.5 | Share capital of the company |
| 7.B.1 | Directors and management[[36]](#footnote-36)# |
| 7.B.17(b) | Preliminary expenses and issue expenses |
| 7.B.20 | Directors’ interests in securities |
| 7.B.22 | Responsibility statement |
| 7.B.23 | Responsibility of directors, managers and advisers |
| 7.C.14 | Market value of securities |
| 7.D.5 | Prospects |
|  | An explanation, including supporting information (if any), of the intended use of the funds |
| 7.G.1 | Documents and consents to be available for inspection |

# The items above must only be included in circulars if there is any direct change in respect of such disclosure items, if not, an appropriate negative statement must be included.

General issue

**Specific requirements**

6.38 An issuer must obtain approval in general meeting through an ordinary resolution and comply with the following:

(a) the equity securities must be issued to public shareholders and not related parties, provided related parties may participate in terms of the bookbuild process described in (b);[[37]](#footnote-37)

(b) related parties can participate in a general issue through a bookbuild process provided:

(i) the general authority approval by shareholders expressly affords the ability to the issuer to allow related parties to participate in a general issue through a bookbuild process;

(ii) related parties may only participate with a maximum bid price at which they are prepared to take-up shares or at book close price. In the event of a maximum bid price and the book closes at a higher price the relevant related party will be “*out of the book*” and not be allocated shares; and

(iii) equity securities must be allocated equitably “*in the book*” through the bookbuild process and the measures to be applied must be disclosed in the SENS announcement launching the bookbuild;

(c) the authority must represent a specified number of securities, excluding treasury shares, being less than 30% of the applicant’s listed equity securities as at the date of the notice of general meeting, provided that:[[38]](#footnote-38)

(i) the general authority shall be valid until the issuer’s next annual general meeting or for 15 months from the date on which the general issue authority was approved, whichever period is shorter, subject to any other restrictions set out in the authority by the issuer;

(ii) in the event of a sub-division or consolidation during the general authority period, the existing authority must be adjusted accordingly to represent the same ratio; and

(d) the maximum discount at which equity securities can be issued is 10% of the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue is agreed.

**Announcement**

6.39 The issuer must release an announcement under a general authority once it has issued, on a cumulative basis, 5% or more of the issued share capital (excluding treasury shares), prior to that issue, including:

(a) the number of securities issued;

(b) the discount to the weighted average traded price of the equity securities over the 30 business days prior to the date that the issue is agreed;

(c) the name of the subscriber, including beneficial owner; and

(d) total consideration to be received and the intended use of the funds

Contents of circular

6.40 An issuer seeking a general issue authority must prepare a circular or include a resolution in a notice of general meeting, addressing the specific requirements for a general issue.

Options and convertible securities

6.41 Where options/convertible securities, excluding executive and staff share schemes, are granted/issued for cash, the issuer must:[[39]](#footnote-39)

(a) obtain a specific authority from equity securities holders to issue options/convertible securities in terms of 6.34; and

(b) obtain a general authority from equity securities holders to issue options/convertible securities in terms of 6.38. The resolution must expressly allow for the issue of options/convertible securities, and the strike price may not exceed a 10% discount to the weighted average traded price of such equity securities measured over the 30 business days at the date of issue of the options/convertible securities.

Submission to the JSE

6.42 The following must be submitted to the JSE:[[40]](#footnote-40)

(a) the circular or notice of general meeting;

(b) the application for listing available on the JSE Forms Portal;

(c) exchange control approval, if applicable; and

(d) any experts’ consents appearing in the circular.

**Extensions of listed options**

**Specific requirements**

6.43 Extensions to listed options must be approved by holders of securities or the directors, and the JSE.

**Announcement**

6.44 An announcement must be released on the extension of the exercise date and listing of listed options, including details on the extension method. The announcement must be published at least six weeks prior to the option’s original expiry date.

**Contents of circular**

6.45 The circular must state the procedure for the extension on the option.

6.46 If the power of extension has been delegated to the directors, a notification must be sent to securities holders with the details of the extension and the authority under which the extension was made.

Submission to the JSE

6.47 The following must be submitted to the JSE:

(a) the circular or notification;

(b) if applicable, a copy of the proposed alteration and/or endorsement to be used on the option certificate; and

(c) a written application, stating:

(i) the number of options to be extended;

(ii) the period of the extension;

(iii) the amounts of the nominal and issued capital and the number of the securities issued;

(iv) that all options issued have been included in the application for listing; and

(vi) a copy of the relevant resolution authorising the extension;

Expiry of listed options or other conversion rights

6.48 Notice must be given to the JSE at least one month before the expiry date of the option or conversion rights stating:[[41]](#footnote-41)

(a) the date on which the options or conversion rights expire and requesting the removal of the options from the List as and from the close of business on the date of expiry; and

(b) that all registered option holders, or registered holders of the securities with conversion rights, have been notified of the date on which the option or conversion rights expire and that, after that date, the option or conversion rights will have no value. This notification should be published at least six weeks prior to the expiry date.

6.49 Application must be made for the listing of securities issued on the exercise of options and conversion rights.[[42]](#footnote-42)

Odd lot offers

Specific requirements

6.50 An odd-lot offer is an offer where the issuer proposes to reduce administrative costs associated with a large number of odd-lot holders.

6.51 Odd lot holdings comprise of:[[43]](#footnote-43)

(a) less than 100 securities; or

(b) 100 or more securities, provided the disposal cost of a holder disposing of such securities equals or exceeds the total value thereof.

6.52 An odd lot offer must have a two-way election whereby holders may:[[44]](#footnote-44)

(a) elect to retain their odd-lot holding; or

(b) elect to sell their odd-lot holding.

6.53 If the default position is the mandatory sale of odd lot holdings to the issuer, it must be permitted in the MOI of the issuer and the odd lot offer must be approved by shareholders in general meeting through an ordinary resolution.

6.54 The issuer must obtain the relevant authority to repurchase securities in terms of this Section.

Contents of circular

6.55 The following must be included in the circular:[[45]](#footnote-45)

(a) details of the resolutions to be approved by shareholders;

(b) the reasons for the odd lot offer;

(c) the election alternatives above; and

(d) a statement in bold and upper case, on the front page, drawing holders’ attention to the mandatory sale of the odd lot holdings if no election is made.

Submission to the JSE

6.56 The following must be submitted to the JSE:

(a) the circular;

(b) the application for removal, available of the JSE Forms Portal;

(c) exchange control, if applicable; and[[46]](#footnote-46)

(d) a resolution by the board that the issuers has passed the solvency and liquidity test in terms of the Act and that, since the test was performed, there have been no material changes to the financial position of the issuers or its group; and[[47]](#footnote-47)

Payments to securities holders

Specific requirements

6.57 A pro rata payment to all securities holders will not require the approval from securities holders.

6.58 Any payment to securities holders which is not pro rata will be regarded as a specific payment and must be approved by securities holders in a general meeting, which approval is not required in respect of cash dividends, scrip dividends or capitalisation issues.

6.59 Approval from securities holders in general meeting is required, where the securities of a distribution are unlisted or will become unlisted when the issuer effects a distribution in specie by way of an unbundling (either by way of pro rata or specific payment).

**Announcement**

6.60 An announcement must include:

(a) the date of the general meeting;

(b) the terms of the payment, including the intended payment date;

(c) an explanation, including supporting information (if any), of the impact of the payment on the financial statements; and[[48]](#footnote-48)

(d) that a circular will be issued with the above details.[[49]](#footnote-49)

**Contents of circular**

6.61 The following must be included in the circular, which must be sent to securities holders within 60 days of publication of the announcement:[[50]](#footnote-50)

(a) in relation to the payment, the:

(i) reason and the intended method of payment;

(ii) [[51]](#footnote-51) source of payment (capital or income payment); and

(ii) terms of payment *.*

(b) an explanation, including supporting information (if any), of the impact of the payment on the financial statements;[[52]](#footnote-52)

(c) a statement by the board that it meets the solvency and liquidity test in terms of the Act, as at the date of the approval of the circular

(d) the following general information:

|  |  |
| --- | --- |
| **Paragraph** | **Nature of statement** |
| 7.A.7 | Major shareholders |
| 7.E.10 | Material change |
| 7.B.20 | Directors’ interests in securities |
| 7.A.4 or 7.A.5 | Share capital of the company |
| 7.B.17 | Expenses |
| 7.B.22 and 7.B 23 | Responsibility |

(e) a statement giving the directors‘ opinions on the payment, a recommendation as to how securities holders should vote and an indication as to how the directors intend to vote their shares.

Submission to the JSE

6.62 The following must be submitted to the JSE:[[53]](#footnote-53)

(a) the circular;

(b) any application for listing available on the JSE Forms Portal;

(c) exchange control approval, if applicable;

(d) experts’ consents appearing in the circular; and[[54]](#footnote-54)

(e) the board resolution approving the specific payment and confirmation that the board has met the solvency and liquidity test in terms of the Act, as at the date of the approval of the circular, and that there have been no material changes to the financial position of the issuer and its group.

Redemption of listed redeemable securities

Specific requirements

6.63 The redemption must be effected in terms of the MOI of the issuer.

Announcements

6.64 Any early redemptions of the issuer’s securities, other than equity securities, must be announced when an aggregate of 3% of the initial number of the relevant class of securities has been redeemed and for each 3% thereafter. Such announcement must be made as soon as possible and, in any event, by not later than 08h30 on the business day following the day on which the relevant threshold is reached or exceeded.

6.65 The announcement must state the number of securities redeemed (if applicable, since the most recent announcement) and the number of securities remaining.

Contents of circulars

6.66 The following must be included in the circular to holders of the redeemable securities:

(a) a summary of the salient features, dates, rationale and action required;

(b) details of exchange control approval obtained, if applicable;

(c) the taxation implications of the redemption;

(d) a detailed narrative on the impact of the redemption on the financial statements; and

(e) the market value of securities in terms [7.C.14].

6.67 The JSE may waive the requirement for a circular where the redemption does not contain any options.

Submission to the JSE

6.68 The following must be submitted to the JSE:[[55]](#footnote-55)

(a) the circular, if applicable;

(b) application for removal of the securities to be redeemed, and the effective date;

(c) exchange control approval, if applicable; and

(d) experts’ consents appearing in the circular.[[56]](#footnote-56)

Repurchase of equity securities

General

6.69 A repurchase in term of the Act or the repurchase in terms of the laws of a foreign incorporated issuer, constitutes a repurchase in terms of the Requirements.

6.70 An issuer proposing to repurchase equity securities can undertake a pro rata repurchase from existing equity securities holders, pro rata their holdings, or obtain a specific or general repurchase authority in terms of the Requirements.

6.71 Approval of security holders is not required for:

(a) a pro rata repurchase from all its equity securities holders; and[[57]](#footnote-57)

(b) intra-group repurchases from wholly-owned subsidiaries, share incentive schemes pursuant to Schedule 14 and/or non-dilutive share incentive schemes controlled by the issuer, where such equity securities are to be cancelled.

6.72 A repurchase of equity securities can take place in terms of an authority:

(a) specifically approved by equity securities holders in general meeting in terms of 6.76; or

(b) generally approved by equity securities holders in general meeting in terms of 6.83.

6.73 The repurchase provisions do not apply to:

(a) repurchases entered into on behalf of *bona fide* third parties, either by the issuer or any other member of its group on arm’s length terms; or[[58]](#footnote-58)

(b) any repurchases by an issuer which is a financial services company (a company that is an authorised user as defined in the FMA, a long-term insurer as defined in the Long-term Insurance Act 1998, as amended, a short-term insurer as defined in the Short-term Insurance Act 1998, as amended and/or a bank as defined in the Banks Act 1990, as amended) of its own equity securities or a repurchase by a subsidiary (which is a financial services company) of an issuer of the issuer’s equity securities on an arm’s length basis and held by such financial services company for the benefit of or to hedge the financial services company’s obligations to third parties and/or as a component of a financial services product made available to clients of that financial services company in the normal course of business. Such equity securities purchased will not be treated as treasury shares.

6.74 When there are equity securities convertible into the class to be repurchased, a separate meeting of the holders of such equity securities must be held and their approval must be obtained by ordinary resolution before the issuer undertakes the proposed repurchase, unless the terms of those equity securities provides for the issuer to repurchase those equity securities.

6.75 If an issuer wishes to issue treasury shares, such issue must comply with the issue of shares for cash provision as if a fresh issue of equity securities.[[59]](#footnote-59)

Specific authority

Specific requirements

6.76 An issuer must obtain approval in general meeting through an ordinary resolution. Parties and their associates participating in the repurchase must be excluded from voting.

6.77 The authority shall be valid until such time as the approval is amended or revoked by ordinary resolution.

6.78 A specific repurchase includes the grant of an option where the issuer may or is obliged to repurchase its equity securities in future and includes a specific offer (being an offer to specific equity securities holders).

6.79 The board must meet the solvency and liquidity test in terms of the Act, as at the date of the approval of the circular;

6.80 If the issuer has announced that it will make a specific repurchase, it must pursue the repurchase, unless the JSE determines otherwise on application.

Announcements

6.81 The issuer, after it has agreed the terms, must immediately release an announcement, including:[[60]](#footnote-60)

(a) the reason for, and method by which the issuer intends to repurchase its equity securities;

(b) details of the equity securities holder (including beneficial owner), the number of equity securities to be repurchased and the price to be paid;

(c) the date on or period over which the repurchase is to be made;

(d) the source of funds to be utilised*;*

(e) the date of the general meeting at which the authority will be sought;

(f) if the repurchase is from a related party, a statement by the independent members of board whether the repurchase is fair insofar as the equity securities holders (excluding the related party, its associates) of the issuer are concerned;

(g) whether the shares will be held as treasury shares or be cancelled;

(h) the total number of treasury shares held after the repurchase; and[[61]](#footnote-61)

(i) a statement that a circular containing details of the above will be dispatched to shareholders.

Contents of circular

6.82 The following must be included in the circular, which must be sent to equity securities holders within 60 days of publication of the announcement :[[62]](#footnote-62)

(a) the announcement information, save for 6.81(i)

(b) a statement by the board that they have complied with the solvency and liquidity test in terms of the Act, as at the date of the approval of the circular and that since the test was performed, there have been no material changes to the financial position of the issuer and its group;

(c) if the repurchase is from a related party, a statement by the independent members of the board whether the repurchase is fair insofar as the equity securities holders (excluding the related party, its associates) of the issuer are concerned.[[63]](#footnote-63)  [[64]](#footnote-64)

(d) the following general information:

|  |  |
| --- | --- |
| **Paragraph** | **Nature of statement** |
| 7.A.27 | Major shareholders |
| 7.E.10 | Material change |
| 7.B.20 | Directors’ interests in securities |
| 7.A.4 or 7.A.5 | Share capital of the company |
| 7.B.17 | Expenses |
| 7.B.22 and 7.B 23 | Responsibility |

General authority

Specific requirements

6.83 An issuer must obtain approval in general meeting through an ordinary resolution.

6.84 The authority shall be valid until the issuer’s next annual general meeting or for 15 months from the date of the authority, whichever period is shorter.

6.85 Repurchases cannot be made at a price greater than 10% above the weighted average of the market value for the securities for the five business days immediately preceding the date of the repurchase.

6.86 The repurchase must be made through the order book operated by the JSE trading system and done without any prior understanding or arrangement between the company and the counter party (reported trades are prohibited). The issuer must only appoint one agent to make any repurchases.

6.87 The board must meet the solvency and liquidity test in terms of the Act, at the time the repurchase is made.

6.88 An issuer or its subsidiary may not repurchase securities during a prohibited period unless they have in place a repurchase programme. The issuer must instruct only one independent agent, which makes its investment decisions in relation to the repurchase, prior to the commencement of the prohibited period to execute the repurchase programme. The repurchase programme must be submitted to the JSE prior to the commencement of the prohibited period and must include:[[65]](#footnote-65)

(i) the name of the independent agent;

(ii) the date of appointment;

(iii) the commencement and termination date; and

(iv) a statement that the quantities of securities to be traded during the relevant period are fixed.

6.89 Securities acquired under the authority must not, in the aggregate in any one financial year exceed 20% of that issuers’ s issued share capital of that class.

Announcements

6.90 An issuer must release an announcement when the issuer has cumulatively repurchased 3% of the class in issue at the date the authority was granted, and for each 3% in aggregate thereafter . Such announcement must be made as soon as possible but no later than 08h30 on the second business day following the day on which the relevant threshold is reached or exceeded, and must include:

(a) the date(s) of repurchase(s);

(b) the highest and lowest prices paid;

(c) the number and value of securities repurchased;

(d) the extent of the authority outstanding, by number of securities and percentage (using the number of securities in issue before any repurchases were made);

(e) the source of funds utilised;

(f) a statement by the board that they have complied with solvency and liquidity test in terms of the Act, as at the date of the repurchase;

(g) a statement that the repurchase was made through the JSE order book;

(h) an explanation of the impact of the repurchase on the financial information;

(i) the number of treasury shares held after the repurchase;[[66]](#footnote-66)

(j) the date on which the securities will be cancelled and the listing removed, if applicable; and[[67]](#footnote-67)

(k) in the event that the repurchase/purchase was made during a prohibited period through a repurchase programme, a statement confirming that the repurchase was mase through a repurchase programme in terms of the Requirements.[[68]](#footnote-68)

Contents of circular

6.91 The following must be included in the circular or notice of general meeting:

(a) a statement of the board of its intention regarding the utilisation of the authority;

(b) a statement by the board that they have complied with solvency and liquidity test in terms of the Act, as at the date of notice of general meeting and that since the test was performed, there have been no material changes to the financial position of the issuer and its group;

(c) the resolution being subject to 6.83-6.86 and 6.89;

(d) the following general information:

|  |  |
| --- | --- |
| **Paragraph** | **Nature of statement** |
| 7.A.27 | Major shareholders |
| 7.E.10 | Material change |
| 7.A.4 or 7.A.5 | Share capital of the company |
| 7.B.22 and 7.B 23 | Responsibility |

Submission to the JSE

6.92 The following must be submitted to the JSE :[[69]](#footnote-69)

(a) the circular;

(b) the application for removal of securities available on the JSE Forms Portal;

(c) exchange control, if applicable;[[70]](#footnote-70)

(d) experts’ consents appearing in the circular;[[71]](#footnote-71) and

(e) the board resolution approving the repurchase and confirming compliance with the solvency and liquidity test in terms of the Act.

Miscellaneous repurchase provisions

Announcement of intra-group repurchases

6.93 An issuer must release an announcement, immediately after intragroup repurchases have been concluded, including:[[72]](#footnote-72)

(a) the date/s and total number of securities repurchased;

(b) whether the securities are repurchased from either a wholly-owned subsidiary/ies, share incentive scheme/s pursuant to Schedule 14 and/or non-dilutive share incentive schemes controlled by the issuer;

(c) confirmation that the repurchased securities have reverted to authorised but unissued equity securities;

(d) the price paid for the repurchased securities; and

(e) the balance of the number of treasury shares held.

Appraisal rights

6.94 Securities repurchases in terms of Section 164 of the Act will not be regarded as a repurchase in terms of the Requirements.

6.95 The issuer must within 48 hours of the repurchase :[[73]](#footnote-73)

(a) submit the application for removal of listing of securities, available through the JSE Forms Portal, and confirm that the securities have been repurchased in terms of Section 164 of the Act; and

(b) on the same day as the application to the JSE, announce:

(i) the effective date of the removal;

(ii) the number of securities that will be removed (expressed in a number and a percentage of the issued share capital of the issuer):

a. the price paid for the securities;

b. the identity of the securities holders; and

c. a statement that the repurchase was made in respect of Section 164 of the Act.

Purchase of securities other than equity securities

Notification of decision to repurchase

6.96 Where an issuer intends to make an offer to all holders in respect of all or part of their holdings, to repurchase any of its securities other than equity securities, it must:

(a) while the offer is open, ensure that no dealings in the relevant securities are carried out by the issuer or its group, until the offer has either been submitted to the JSE or abandoned; and

(b) notify the JSE of its decision to proceed with the offer to repurchase.

Announcement of repurchases, early redemptions and cancellations

6.97 Any repurchases, early redemptions or cancellations of the issuer’s securities, other than equity securities, must be announced when an aggregate of 3% of the initial number of the relevant class of securities has been purchased, redeemed or cancelled and for each 3% in aggregate of the initial number of that class acquired thereafter. Such announcement must be made as soon as possible and, in any event, by not later than 08h30 on the second business day following the day on which the relevant threshold is reached or exceeded. The announcement must state the number of securities purchased, redeemed or cancelled since the most recent announcement, the number of the class of securities that remain outstanding, and when the securities repurchased are to be cancelled and the listing removed, if applicable.

Period between repurchase and notification

6.98 In circumstances where the repurchase is not being made pursuant to an offer announced in accordance with 6.96 and the repurchase results in the issuer reaching or exceeding a relevant threshold as specified in 6.97, no further repurchases may be effected until after notification in compliance with 6.97 has been made.

Convertible securities

6.99 In the case of securities that are convertible into, exchangeable for, or carry a right to subscribe for equity securities, unless a partial offer is made to all holders of that class of securities on the same terms, repurchases must not be made at a price more than 10% above the 5 business day weighted average price of the securities immediately preceding the date of repurchase.

Rights offers[[74]](#footnote-74)

Specific requirements

6.100 A rights offer can be:

(a) a renounceable rights offer; or[[75]](#footnote-75)

(b) a non-renounceable rights offer, provided the maximum discount that securities can be offered does not exceed 10% of the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue was determined by the issuer.[[76]](#footnote-76)

6.101 The provosions for rights offers apply equally to claw-back offers.

**Letters of Allocation – Renounceable Rights Offer**

6.102 LAs must be listed, renounceable and in dematerialised form.

6.103 The following must be included in the LA:

(a) the salient details of the corporate action must be printed on the front page;

(b) the instructions in respect of acceptance and payment, sale and renunciation and registration; and

(c) where excess securities are made available, the application form must be printed in a different colour to the LA.

6.104 Forms of instruction in respect of LAs must be sent to certificated holders, in terms of which: Form A (Instruction to Sell) and Form B (Form of Renunciation) must require the signature of the offeree(s); Form C (Registration Application Form) must require the signature of the renouncee(s); and Form D (Documents of Title) must not require a signature.

Underwriting

6.105 If the rights offer is not underwritten, it must not be conditional on a minimum subscription being received.

6.106 If underwritten, the:

(a) the applicant issuer must obtain sworn affidavits from at least two directors of the underwriter confirming to the applicant issuer that it has the financial resources to meet its obligations in terms of the underwriting agreement; and

(b) the board must make due and careful enquiry to confirm that the underwriter can meet its commitments in terms of the offer.

6.107 Any underwriting commission payable to a shareholder must not be greater than the current market rate payable to independent underwriters. The board must provide the JSE with evidence of the reasonableness of the commission payable.

Excess security applications

6.108 A rights offer may include the right to apply for excess securities, subject to such right being transferable upon renunciation of the LA.

6.109 Excess securities should be allocated equitably, taking into account:

(a) the current holdings prior to the application;

(b) the number of securities taken up in terms of the rights offer; and

(c) the number of excess securities applied for.

Contents of circular

6.110 The following must be included in the circular:

(a) whether the rights offer is renounceable or not;

(b) the purpose of the rights offer;

(c) the terms of the rights offer, the amount to be raised and the number of securities that are proposed to be issued;

(d) the class and the par value (if any) of the securities involved;

(e) whether any directors, prescribed officers and/or company secretary of the issuer aim to follow their rights;[[77]](#footnote-77)

(f) a statement on any tax implications for both resident and non-resident shareholders;

(g) the ratio in which the securities will be issued and allotted in terms of the rights offer to shareholders.

(h) the corporate action timetable;;[[78]](#footnote-78) and

(i) if underwritten,

(a) details of the underwriter, including beneficial owner;

(b) the names of the directors of the underwriter, if a company;

(c) the bankers to the underwriter;

(d) the underwriting commission; and

(e) a statement by the board that they have made due and careful enquiry to confirm that the underwriter can meet its obligations in terms of the underwriting agreement;

(j) details regarding the proposed listing of the LAs, the subsequent listing of the new securities and the amount payable in respect of listing fees;

(k) details regarding the LAs such as:

(a) acceptance;

(b) renunciation; and

(c) payment (payment must be made in South African currency); and

(l) a statement regarding exchange controls as agreed to by the South African Reserve Bank.

6.111 The following additional information must be included in the circular:

|  |  |
| --- | --- |
| **Paragraph** | **Nature of statement** |
| 7.A.1 | Name, address and incorporation |
| 7.A.4 or 7.A.5 | Share capital of the company |
| 7.B.1 | Directors and management[[79]](#footnote-79)# |
| 7.B.17(b) | Preliminary expenses and issue expenses |
| 7.B.20 | Directors’ interests in securities |
| 7.B.22 | Responsibility statement |
| 7.B.23 | Responsibility of directors, managers and advisers |
| 7.C.14 | Market value of securities |
| 7.D.2 | Description of business |
| 7.D.5 | Prospects |
|  | An explanation, including supporting information (if any), of the intended use of the funds |
| 7.G.1 | Documents and consents to be available for inspection |

# The items above must only be included in circulars if there is any direct change in respect of such disclosure items, if not, an appropriate negative statement must be included.

Submission to the JSE

[[80]](#footnote-80) 6.112 The following must be submitted to the JSE :

(a) the circular or PLS;

(b) if applicable, the underwriting agreement and the sworn affidavits;

(c) the application for listing available on the JSE Forms Portal;[[81]](#footnote-81)

(d) the provisional LAs;

(e) exchange control approval, if applicable; and

(f) experts’ consents appearing in the circular or PLS.

Change of Sector

6.11 An issuer may make application to the JSE for a change of sector subject to the process available on the JSE Process Portal and the corporate actions timetable.

Voluntary liquidation

6.114 An issuer entering into voluntary liquidation must obtain approval from shareholders in general meeting and distribute a circular to shareholders, including:[[82]](#footnote-82)

(a) a summary of the mechanics of the liquidation distribution and the payment procedure to be adopted;

(b) exchange control rulings/ guidelines;

(c) the taxation implications of the distribution; and

(d) the effect on net asset value, net tangible asset value, earnings and headline earnings per share.

6.115 If approved by shareholders, an application must be submitted to the JSE for the removal of the listing in accordance with the corporate action timetable.

**Amended definitions on next page**

**Definitions**

**Acquisition issue**

|  |  |  |
| --- | --- | --- |
| acquisition issue[[83]](#footnote-83) |  | an issue of securities as consideration for an acquisition of assets,, excluding issues for cash; |
|  |  |  |
|  |  |  |
|  |  |  |
| vendor consideration placing[[84]](#footnote-85) |  | securities that are to be issued for an acquisition(a) as marketing on behalf of vendors; or  (b) to settle a vendor cash consideration |

**Alteration of share capital**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | |  | |
| equity share capital |  | | an issuer’s share capital, excluding any convertible securities, equity instruments and any other securities which are regarded as debt instruments in terms of IFRS or the Act; | |
| issued share capital | |  | | the portion of the share capital of an issuer that has been subscribed for by shareholders; |

**Dividends, Capitalisation Issues and Scrip Dividend**

|  |  |  |
| --- | --- | --- |
| capitalisation issue |  | an issue of fully paid shares capitalised from an issuer’s share premium, capital redemption reserve fund or reserves, or from a combination thereof, to existing shareholders of the issuer in proportion to their shareholdings at a specific date; |
| scrip dividend[[85]](#footnote-87) [[86]](#footnote-88) |  | a cash dividend incorporating an election on the part of shareholders to receive either capitalisation shares or cash; |

**Issues for cash**

|  |  |  |
| --- | --- | --- |
| weighted average traded price |  | the total value of the securities traded divided by the total number of securities traded over a prescribed period of time. If the securities have not traded for the prescribed period of time, the JSE must be consulted. |

**Rights Offers and Claw Back Offers**

|  |  |  |
| --- | --- | --- |
| claw back offer  LA |  | a pre-placed rights offer where securities are issued, for cash by an applicant issuer, which are then offered to the applicant issuer’s shareholders, pro rata their existing holdings, in the form of a right whereby shareholders can “claw back” their right to subscribe for such securities;[[87]](#footnote-89)  in relation to a renounceable right, forms of instruction in respect of letters of allocation; |
| renounceable offer |  | an offer by an applicant issuer to its shareholders to subscribe, by way of rights for securities,, through the issue of a renounceable LA, traded as either “full paid” or “nil paid” rights usually the listed company’s subsidiary, where the listed company has received the right to subscribe for those securities in the applicant but renounces all or part of that right to its shareholders pro rata to their shareholdings[[88]](#footnote-90) |

|  |  |  |
| --- | --- | --- |
| rights offer[[89]](#footnote-91) |  | an offer by an applicant issuer to existing shareholders to subscribe for further securities in the issuer pro rata their existing holdings by means of the issue of (i) a renounceable right or (ii) a non-renounceable right; |
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